

HOUSE OF LORDS.

GREGORE COJAMAU, - - - - - Appellant.

HARRY VERELST, *Esq;* - - - - - Respondent.

The Respondent's C A S E.

THE Appellant having brought his Action in the Court of Common-Pleas at *Westminster* against the Respondent, and declared in such Action for a supposed Assault and false Imprisonment of him by the Respondent, at *Hindostan*, on the 14th day of *March* 1768; and in such Declaration alledged several Matters specially in aggravation of Damages, such as the Loss of his Property and Health, and his being deprived of seeking his Livelihood and Subsistence, and attending to his necessary Business and Affairs, and the Care and Preservation of his Goods and Effects, and laid his Damages in such Declaration at 20,000*l.*: And the Respondent being, at the Time the Cause of Action is supposed to have arisen, resident in *Calcutta*, in the *East-Indies*, and being then President and Governor of *Fort-William* there, under the United Company of Merchants of *England* trading to the *East-Indies*, and acting under their Authority, and in such his public Capacity, in whatever was done by him respecting the Appellant: And many material Witnesses for the Respondent being Natives of, or resident in, the *East-Indies*, and there being many public and private Records and Papers there which would be very material Evidence for the Respondent, and necessary to be produced and proved on the Trial of the said Action,

The Respondent was advised to file, and did file his Bill in his Majesty's Court of Exchequer at *Westminster*, against the Appellant; stating (among other Things), That by an Act of Parliament passed in the 9th and 10th Years of the Reign of his late Majesty King *William* the Third, intituled, "An Act for raising a Sum not exceeding Two Millions upon a Fund for Payment of Annuities, after the Rate of 8*l.* per Cent. per Ann. and for settling the Trade to the *East-Indies*;" his said late Majesty was empowered, by Letters Patent under the Great Seal of *England*, to incorporate all such Persons and Corporations, who should subscribe towards raising the Money directed to be raised in and by the said Act, and who should desire the same, by such proper Names as his Majesty should think fit, to be one Company, with Power to manage and carry on their Trade to the *East-Indies*, and other the Limits in the said Act mentioned, by a Joint Stock; and to have a Perpetual Succession and a Common Seal; and with a Power to grant and take, sue and be sued, and to choose their own Managers or Directors, and Officers, from Time to Time; and such other Powers and Clauses, as should be necessary or requisite for the carrying on of such Trade, and should be reasonable for his Majesty to grant: And that it should be lawful for his said late Majesty, by his Charter of Incorporation, to empower such Company as should be erected to trade with a Joint Stock, as aforesaid, and their Successors, to make reasonable Laws, Constitutions, Orders, and Ordinances, from Time to Time, for the good Government of the said Trade to the *East-Indies*, and other the Parts in the said Act mentioned, and of the Traders, Factors, Agents, Officers, and others concerned in the same, and to inflict reasonable Penalties and Punishments, by Imprisonments, Mulcts, Fines, and Amerciaments, for any Breach or Breaches thereof; and to levy such Mulcts, Fines, or Amerciaments to the Use of such Company: And that such Persons or Corporations as, in Pursuance of that Act, should have a Right and Power to trade to the *East-Indies*, and other the Parts in the said Act mentioned, from and after the 29th Day of *September* 1698, should use and enjoy the whole and sole Trade and Traffick, and the only Liberty, Use, and Privilege, of trading, trafficking, and exercising the Trade or Business of Merchandize to and from the *East-Indies*, in the Countries and Parts of *Asia* and *Africa*, and to and from all the Islands, Ports, Havens, Cities, Towns, and Places of *Asia*, *Africa*, and *America*, or any of them, beyond the Cape of *Bona Esperanza*, to the Straights of *Magellan*; and that the said *East-Indies*, or the Islands, Havens, Ports, Cities, Towns, or Places within the Limits before mentioned, or any of them, should not, after the said 29th Day of *September*, 1698, be visited, frequented, or haunted, by any other of the Subjects of his Majesty, his Heirs or Successors, during such Time as the Benefit of Trade thereby given, or intended to be given, to the Subscribers or others, ought to continue by virtue of the said Act of Parliament.

The Bill also stated, That his said late Majesty King *William* the Third, in and by his Letters Patent under the Great Seal of *England*, dated at *Westminster* the 5th Day of *September* 1698, did, in Pursuance of the Powers and Clauses for that Purpose contained in the said Act of Parliament, and by virtue of his Prerogative Royal, for himself, his Heirs and Successors, give, grant, make, ordain, constitute, declare, appoint, and establish, that the Subscribers therein named, and every of them, and all Persons and Bodies Politic and Corporate deriving under them, who should have or be intitled to any Share or Interest in the Fund settled by the said Act, should be One Body Politic and Corporate, by the Name of the *English Company trading to the East-Indies*; and that they and their Successors should have Perpetual Succession, and a Common Seal, and purchase, sue and be sued, as a Body Politic and Corporate; and that the said *English Company* trading to the *East-Indies*, and their Successors, should and might, for ever thereafter, as well by themselves as by such Factors, Agents, or Servants, as they severally should think fit to intrust, freely traffic and use the Trade of Merchandize, in such Places, and by such Ways and Passages, as were then already frequented or discovered, or which should be thereafter found out, as they severally should esteem best for them, unto and from the *East-Indies*, into the Countries and Parts of *Asia* and *Africa*, and unto and from the Islands, Ports, Havens, Cities, Creeks, Towns, and Places of *Asia*, *Africa*, and *America*, or any of them, beyond the Cape of *Bona Esperanza*, to the Straights of *Magellan*, where any Trade or Traffick of Merchandize was or might be used or had; and that, for the better managing the Affairs of the same Company, there should be, from Time to Time, for ever, of the Members of the same Company, twenty-four Directors; and that it should be lawful for the Members of the same Company, from Time to Time, to meet together for the Choice of Directors, and for the making of Bye-laws, Ordinances, Rules, Orders, or Directions, for the governing of the Company, or for any other Affairs or Business concerning the same: And that the said Company, and their Successors, and their Factors, Servants, and Assistants, in the Trade of Merchandize, for them and on their Behalf, and not otherwise, should for ever thereafter have, use, and enjoy the whole, entire, and only Liberty, Use, and Privilege of trading, trafficking, and using the Trade of Merchandize to and from the said *East-Indies*, and to and from all the Islands, Ports, Havens, Cities, Towns, and Places aforesaid: And that the said Company for the Time being should and might have the Ordering, Rule, and Government of all such Forts, Factories, and Plantations, as should be at any Time thereafter settled by or under the said *English Company* within the *East-Indies*, or Parts before mentioned; and should and might name and appoint Governors and Officers, from Time to Time, in and for the said Forts, Factories, and Plantations; and that such Governors and Officers might, according to the Directions of the same Company, raise, train, and muster such Military Forces as should be necessary for the Defence of the said Forts, Places, and Plantations respectively.

The Bill likewise stated, that further Powers, Privileges, and Authorities being found wanting, the said Company, from Time to Time, applied for, and obtained, Acts of Parliament for that Purpose: And by an Act passed in the 17th Year of the Reign of his late Majesty King *George* the Second, It was (amongst other Things) enacted,

that notwithstanding the Redemption of the Annuities or Yearly Funds therein mentioned; the said United Company of Merchants of *England* trading to the *East-Indies* should have, use, and enjoy, and should continue to have, use, and enjoy, the whole, sole, and exclusive Trade and Traffick, and the only Liberty, Use, and Privilege of trading and trafficking, and exercising the Trade and Business of Merchandize, in, to, and from the *East-Indies*, and into and from all the Islands, Ports, Havens, Coasts, Cities, Towns, and Places between the Cape of Good-Hope and the Streights of Magellan, and the Limits in the said Act of the 9th Year of King *William* the Third, or in the said Charter of the 5th of September in the 10th Year of the said Reign mentioned, in as ample and beneficial a Manner as the said Company could thereby, or otherwise, lawfully trade thereto; and that the said United Company should at all Times thereafter, for ever, have, use, and enjoy, and be intitled unto, all and every the Profits, Benefits, Advantages, Privileges, Franchises, Abilities, Capacities, Powers, Authorities, Rights, Remedies, Methods of Suit, and all Penalties and Forfeitures and Disabilities, Provisions, Matters and Things whatsoever, which by any former Act or Acts of Parliament, or by any Charter or Charters founded thereupon, or by any Clause or Clauses in the said Acts or Charters contained, were enacted, given, granted, provided, inflicted, limited, established, or declared, to, for, touching, or concerning the said Company, or Body Politic or Corporate, either by the Name of the *General Society* intitled to the Advantages given by an Act of Parliament for advancing a Sum not exceeding two Millions for the Service of the Crown of *England*, or the said Body Politic or Corporate called by the Name of the *English Company trading to the East-Indies*, or the Body Politic and Corporate then and now called by the Name of the *United Company of Merchants of England trading to the East-Indies*, and not by that Act altered, or intended to be altered, according to the Tenor and true Meaning of the said Acts and Charters, freed and discharged from all Provisions and Conditions of Redemption and Determination therein contained; and the same, and every of them, were thereby ratified and confirmed: And that it was thereby declared, that the same should continue to be held and enjoyed, and be practised and put in Execution, by the said Company, and their Successors, for the better and more effectual settling and securing to them, and their Successors, the whole, sole, and exclusive Trade to the *East-Indies* and Parts aforesaid, and for preventing all other his Majesty's Subjects trading thither, and for securing also their Possessions, Estate, and Effects, and governing their Affairs and Business, in all respects, as fully and effectually as if the same Profits, Benefits, Advantages, Trade, Privileges, Franchises, Liberties, Capacities, Powers, Authorities, Rights, Remedies, Methods of Suit, Penalties, Forfeitures, Disabilities, Provisions, Matters and Things, were severally repeated, and at large re-enacted, in the Body of that Act.

Commission to Lord Clive and others.

The Bill further stated, That the said United Company of Merchants of *England* trading to the *East-Indies*, by a Commission under their Common Seal, bearing Date the 31st of May 1764, made and constituted the Right Hon. Robert Lord Clive, Baron Clive of Plassey in the Kingdom of *Ireland*, and Knight of the most Hon. Order of the Bath, to be President and Governor of and for all the said Company's Affairs in the Bay of *Bengal*, and other the Places and Provinces thereunto belonging in the *East-Indies*, and also to be their Governor and Commander in Chief of their *Fort-William* in the Bay of *Bengal*, and all the Towns and Territories thereunto belonging, and of all and singular the Forts, Factories, and Settlements, Lands, Territories, Countries and Jurisdictions belonging to them within the Subship of *Bengal*, and of all the Forces which then were, or thereafter might or should be employed for the Service of the said United Company, in the said Forts, Towns, and Places, and to execute all and every the Powers and Authorities thereunto appertaining, by the Order and Direction of the Court of Directors of the said United Company for the Time being, and to continue in the Exercise of the same during their Pleasure, and untill the contrary thereof should be signified under the Seal of the said United Company of Merchants of *England* trading to the *East-Indies*, or under the Hands of Thirteen or more of the Court of Directors of the said Company for the Time being: And to the end that the said Robert Lord Clive might be better enabled to order and manage all the Affairs of the said United Company, they did by the said Commission constitute and ordain William Brightwell Sumner, Esq; to be 2d of their Council of *Fort-William* next after the said President Lord Clive; Brigadier General John Carnac to be and continue 3d of their said Council, and not to rise to a superior Rank therein; Mr. William Ellis to be 4th, Mr. Charles Stafford Pleydell to be 5th, Mr. William Billers to be 6th, the Respondent to be 7th, Mr. John Cartier to be 8th, Mr. Warren Hastings to be 9th, Mr. John Johnstone to be 10th, Mr. Francis Sykes to be 11th, Mr. William Hay to be 12th, Mr. Randolph Marriot to be 13th, Mr. Hugh Watts to be 14th, Mr. Ascanius Williams, Senior, to be 15th, and Mr. John Chambers to be 16th and last of their said Council of *Fort-William*, for the governing and managing all the said Company's Affairs in *Bengal*, and the Places and Provinces belonging to the said Company as aforesaid: And they did thereby give and grant unto their said President and Governor Robert Lord Clive, and to their Council before named, or to the major Part of them, the Council being duly summoned, full Power and Authority, from Time to Time, to rule and govern all and every their Factories and Servants under the said Presidency, and all the Soldiers and Inhabitants of their said *Fort-William*, and all the Towns and Territories thereunto belonging, and of all and singular the Forts, Factories, and Settlements, Lands, Territories, Countries, and Jurisdictions belonging to the said Company, or within the Subship of *Bengal*, to administer lawful Oaths, as occasion should require, and to do and perform all such other Acts and Things, and to use and exercise all such other Powers and Authorities, as the President and Governor and his Council, in their several and respective Places, where the said United Company had or should have Factories, or any Places of Trade, were authorized to do, according to such Instructions and Directions as the said Robert Lord Clive their President, and Governor and Council aforesaid, should from Time to Time receive under the Hands of thirteen or more of the Court of Directors of the said United Company for the Time being: And the said United Company did thereby order and require all their Factors, Servants, Officers, and Soldiers, within the Limits of the said Presidency, and all the People and Inhabitants of the said *Fort-William*, and all the Towns and Territories thereunto belonging, to conform, submit, and yield due Obedience unto him the said Robert Lord Clive their said President and Governor, and his Council, accordingly: And for as much as it was altogether necessary, that in Case of the Death or Removal of the said Robert Lord Clive, their Presidency should be provided for the Defence and Government thereof, they did therefore by the said Commission ordain and appoint, that in such Case, the said William Brightwell Sumner should immediately be and succeed in the Place and Charge of President and Governor of *Fort-William* aforesaid; and in case of his Death or Removal, the next in Degree of Council below the said Brigadier General Carnac should succeed in the said Presidency and Government, in as full and ample Manner, and with as large and ample Powers, Privileges, and Authorities, as were by the said Commission granted unto the said Robert Lord Clive, until their further Pleasure should be known therein.

Appointment of Select Committee.

The Bill further stated, That the critical Situation of the said Company's Affairs in the Year 1764 making it necessary to appoint a Select Committee, the Court of Directors of the said Company, by their General Letter or Order, dated the 1st of June 1764, appointed a Committee, consisting of his Lordship, the said William Brightwell Sumner, Brigadier General Carnac, the Respondent, and the said Francis Sykes; to whom they gave full Powers to pursue whatever Means they should judge most proper to attain the desirable Ends mentioned in the said Letter or Order; and by the same Letter or Order the Respondent was directed to succeed to the Government, on the coming away or Decease of the said William Brightwell Sumner: And that by a General Letter or Order of the said Court of Directors, dated the 17th of May 1766, they declared they thought it absolutely necessary to continue a Select Committee, and ordered and directed that the said Committee should consist of the following Members (that is to say) the said Robert Lord Clive, President; the said William Brightwell Sumner 2d, and to succeed Lord Clive; the said Brigadier General Carnac 3d, but not to rise higher; the Respondent 4th, the said Francis Sykes 5th, and Richard Becker 6th; and on the coming away or Decease of the said General Carnac, Richard Smith was to succeed him as 3d in the said Committee, but not to rise to an higher Rank therein; and the said Robert Lord Clive, and the said Select Committee, were authorized, on Vacancies happening, to fill them up from the Members of the Council; and they did thereby confirm the Powers with which their President Lord Clive, and the rest of the Select Committee, were then already invested, and thereby gave them full Authority to correct Abuses of every kind, and to do



do every Act and Deed which might contribute to preserve Peace, Tranquillity, Discipline, Harmony, Good Order, and Subordination in the Settlement, by suspending the Offenders from their Service, be they whom they might; and directed that all other Persons not under Covenants to them, who should offend in any of those Points, should have their Protection withdrawn from them.

Court of Direc-
toral Letter of
February 1764.

The Bill likewise stated a General Letter or Order of the said Court of Directors of the 8th of February 1764, whereby they ordered, That as no Agents or Gomastahs were to reside on Account of private Trade at any of the inland Parts of the Country, all Business on Account of licensed Trade was to be carried on by and through the Means of the Company's Covenant Servants resident at the several subordinate Factories, as had been usual; and another general Letter or Order, dated the 24th of December 1765, whereby the said Court of Directors wrote to the Effect following, (that is to say) " We think it necessary to establish that all Trade to be carried on within the " Provinces where Factories are established, shall be carried on by our Servants at such Factories, and their Agents " only, who shall transact the Business of our other Servants, on receiving the established Commission, and on any " Refusal to accept such Commission, or any Tendency to monopolize, the Servants of *Calcutta*, or other Parts, are " at Liberty to send their own Black Gomastahs, who are nevertheless to be accountable for their Conduct to the " Company's Servants, within whose Jurisdiction they reside: All Districts not comprehended within the Jurisdiction " of each Subordinate, shall be considered as within the Jurisdiction of the Board of *Calcutta*."

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The said Bill likewise stated, That the Governor and President, and Council of *Fort-William*, and the said Select Committee, did, from Time to Time, make and pass, in pursuance of the said Letters or Orders received from the Court of Directors of the said Company, several Resolutions and Orders for calling in the several Gomastahs or Agents, whether *English*, *Portuguese*, or *Armenians*, and likewise free Merchants and unlicensed Traders, and *European* Stragglers; and particularly at a Consultation held by the said President and Council at *Fort-William*, on the 20th day of May 1765, they agreed and ordered, That public Advertisements should be made, enforcing their Orders then already given for the Return of the *English*, *Portuguese*, and *Armenian* Gomastahs or Agents, employed in the several Parts of the Country, to the Presidency, and requiring all, whoever, most strictly, to arrive by the 1st Day of August then next, and their Constituents to give them due Notice accordingly; and that in consequence of such Orders, several of the Company's Servants who had Agents up the Country, and the immediate Recall of whose Agents might be of considerable Loss to them their Constituents, and in particular Messrs. *Vansittart* and *Plowman*, Mr. *Skinner*, Mr. *Scotney*, Mr. *Middleton*, and Mr. *Keir*, applied to the said Committee, requesting them to grant Indulgencies of further Time, of Three or Four Months, for their Agents to remain in the Country, which were accordingly granted them, for the collecting in and settling the Affairs and Effects of their Constituents; and it was at the same Time declared by the said Committee, that they were resolved to see the Company's Orders rigidly enforced at the Expiration of that Period: but the said Bill further stated, that several of such Gomastahs, notwithstanding such repeated Orders, which had issued not only in Consequence of the said Orders and general Letters from the said Court of Directors, but also in Consequence of the repeated Complaints against such Gomastahs made to the said Committee, and President and Council, by the Nabobs and Country Powers, particularly *Sujab al Dowlab*, and the Rajah *Bukwanting*, still remained and traded in and about the Country.

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The Bill further stated, That in the Year 1766, the said *William Brightwell Sumner*, *William Ellis*, *Charles Stafford Pleydell*, and *William Billers*, the 2d, 4th, 5th, and 6th in Council, died, or left *India*; and the said General *Carnac* being the 3d, and restricted by the said Commission from rising higher, the Respondent became 2d in Council, and on Lord *Clive's* Absence or Indisposition acted as Governor; and on the said Lord *Clive's* Departure from *India*, in the latter End of January 1767, became by Seniority Governor and President of the said Presidency of *Bengal*, and also President of the said select Committee; and that he was confirmed Governor by the said Court of Directors, by their general Letter or Order, dated 17th May 1766; and that the Respondent did in all Things according to his best Judgment, as Governor, President, and Member of the said Council and Select Committee respectively, and as a Servant of the said United Company of Merchants of *England* trading to the *East-Indies*, pursue and put in Execution the Orders and Directions of the said Company, and their Court of Directors, and use his best Endeavours to restore and preserve Peace, Tranquillity, due Order, and Subordination, within the said Presidency of *Fort-William*, and Subship of *Bengal*, and to promote and protect the Trade and Commerce of the said Company in *India*, in all Matters within the Jurisdiction and Management of his Place and Office respectively, during the Time he continued in the *East-Indies*: but that the Appellant contriving to injure and oppress the Respondent, and to extort from him a large Sum of Money, or otherwise to harass and distress him, had lately, and without any just Cause, Ground, or Foundation, brought an Action of Assault and Imprisonment, in his Majesty's Court of Common-Pleas at *Westminster*, against the Respondent, and had declared therein against him, and laid his Damages at 20,000*l.*: And as a Ground or Foundation for, and as the Cause of such Action, the Appellant pretended, that he for many Years resided in the Provinces of *Bengal* belonging to the *East-India* Company, or in some of the Dominions bordering upon those Provinces belonging to different Princes in *Hindustan*; and that during such Time he was concerned in Trade in a very extensive Way, as well in his own Right, as Agent or Gomastah for Merchants of other Nations, and in particular for several *English* Merchants upon Commission; and that from such and other his mercantile Concerns, he had got a comfortable Livelihood or Support, and that his said Concerns were daily growing more extensive and profitable; and that the Respondent, together with *Richard Smith*, *John Cartier*, *Richard Becker*, *James Alexander*, *Claud Russel*, *William Aldersey*, and *Charles Floyer*, contriving to ruin and oppress him, did some Time, on or about the 14th of March 1768, seize the Appellant, or cause him to be seized, in the Territories of the said Rajah *Bukwanting*, or of the said Nabob *Sujab al Dowlab*, in the *East-Indies*, with a Force of 50 or 60 armed Men; and that he was removed in Confinement under Guard from Place to Place, till he arrived at *Patna* and *Murshedabad*, within the Dewannee Territories of the said Company, and under the Command of their Collectors *Sbettabroy* and *Mahomed Reza Khawn*; and that at the last of such Places, the Appellant was confined until on or about the 23d of May 1768, and was used with great Cruelty when so under Confinement; and after having travelled for the Space of 600 Miles or thereabouts, was afterwards discharged; and that thereby the Appellant was not only stripped of the Advantage of his Concerns in Trade, but also of the whole of his Property; and that the Appellant let up many other Pretences as the Ground of such Action.

in the Bill.

But the said Bill charged the contrary of such Pretences to be true; and that in the Month of November 1766, and from that Time to March 1768, as well as before that Period, the Appellant was employed, or pretended to be employed, as Agent or Gomastah for one *William Bolts* of *Calcutta*, who was, before the said Month of November 1766, in the Service of the said *East-India* Company, but had then quitted the same, and had no longer any Right to carry on Trade within the Limits described by the said Charter above-mentioned, either by himself or his Agents, and for other Servants of the Company, by Commission, within the Territories of the Rajah *Bukwanting*, or within the Government and Jurisdiction of the Nabob *Sujab al Dowlab*, and, as well as other Gomastahs or Agents employed by the *English* in the said Country, was guilty of great Oppression and Extortion under the Sanction of the *English* Name, and contrary to the several Resolutions of the said President and Council of *Fort-William* aforesaid, and the several Orders and Directions of the Court of Directors of the said United Company of Merchants of *England* trading to the *East-Indies*, for the recalling of Gomastahs or Agents of the *English* from the Provinces, and withdrawing the Protection and Sanction of the *English* Name from them, before in the said Bill set forth, or had been guilty of great Fraud, Extortion, and Oppression, in the Course of his Trade, and Opposition to the lawful Authority of the said Rajah and *Sujab al Dowlab*, or one of them, and contrary to the Laws of their respective Dominions; and that the Appellant was never possessed of, or intitled to, any such large Property in the *East-Indies*, or elsewhere, as he pretended; or if he was, that he did not lose nor was deprived of the same by any such Means as he pretended; or if he did, or was, that he had since recovered or got in the same:

same: And that the Appellant never was seized or imprisoned, or removed under any Guards, or confined, or caused to be seized or imprisoned, or removed under any Guards, or confined, by the Respondent; or if he was, that the same was not done without any just or reasonable Cause; and that the Appellant never was, by any Ways or Means whatsoever, stripped of the Whole or any Part of his Property by the Respondent, or greatly, or at all harrassed either in Body or Mind; nor was his Life despaired of, nor was he treated when under Confinement with any such Cruelty as he pretended; or if he was, the same was not done by or by the Order of the Respondent; but that if the Appellant ever was seized, confined, imprisoned, or removed from Place to Place under Guards, as he pretended, it was by the Orders and Directions of the said *Sujab al Dowlab* and *Rajah Bulwantsing*, or One of them, for a Breach of the Laws of their Territories, and Disobedience to their lawful Authority, and as Offenders against them, and not by the Order or Directions of the Respondent, or under any Authority derived from him; or that if the Appellant was seized or confined, or procured or caused to be seized or confined, by him the Respondent, or under his Authority, that the Appellant was so seized and confined in the Territories of the said *Rajah Bulwantsing*, and the said *Nabob Sujab al Dowlab*, or One of them, or some other Country Power in *Hindostan*, at the Desire, and upon the Complaint, and by and under the Order and Direction of the said *Rajah* or *Sujab al Dowlab*, or One of them, or such other Country Power, and was treated with all possible Humanity and Tenderness in every Respect; and was so arrested after repeated Notices and Admonitions, and for the necessary Protection of the Trade, and good Order and Government of the Territories of the said *Rajah* and *Sujab al Dowlab*, or such other Country Power in the *East-Indies*; and that the Respondent no otherwise acted therein, than as a Servant of the said United Company, who were then in Amity with the said *Nabob* and *Rajah*, and such other Country Powers respectively, and by withdrawing any Sanction or Protection the Appellant might claim, or have, or pretend to, as an Agent for the *English*, and which the Respondent did in pursuance of the said Orders and Letters of the said Company, in the Bill set forth, and for the Support, Welfare, and Maintenance of their Trade in *Bengal*, and as acting under the Authority of the said Charter, and Acts of Parliament above-mentioned, and not through any Malice, Resentment, or View of Self-Interest in him the Respondent; and that the Truth of the said several Charges would appear, and could be proved by the Testimony of several Persons then living in the *East-Indies*, and by several authentic Records, Documents, Orders, Letters, and Papers, then in the *East-Indies*; and that the Cause of the said Action, so brought by the Appellant, if any such Cause he had, did wholly arise at *Bengal*, or some other Place in the *East-Indies*; and that several material Papers, Documents, and other Pieces of Evidence, and likewise several material Witnesses, who could prove the Truth of all, or most, or some of the several Matters before stated and charged to have passed in the *East-Indies*, and by whom alone he the Respondent could prove the said several Matters, were then in the *East-Indies*; and that he the Respondent could not make a full and compleat Defence on the Trial of the said Action brought against him, without having the Benefit of such Evidence and Testimony, or a Discovery and Admission of the said Facts above-mentioned, from the Appellant himself; and that the Appellant threatened forthwith to proceed to Trial in the said Action against the Respondent.

Names of Persons in the *East-Indies*, necessary to be examined for the Respondent.

The said Bill further expressly charged, That the said *Nabob Sujab al Dowlab*, *Rajah Bulwantsing*, *Nabob Mahomed Keza Khawn*, *Rajah Nunkomer*, *Rajah Pursed Roy*, Envoy from *Sujab Dowlab*, resident at *Calcutta*, *Sir Robert Barker*, Commander in Chief of the Army in *Bengal*, *Captain Gabriel Harper*, *Captain Henry Bickerton*, *Captain Thomas Conway*, *Lieutenant Bruce*, *Lieutenant Harrison*, *Thomas Motte*, Esq; *Edward Baber*, Esq; *Philip Delafield*, *Simeon Droze*, Secretary to the Governor and Council of *Calcutta*, *John Holme*, Notary Public at *Calcutta*, *Gocul Gossaul*, *William Broughton Rous*, Esq; *Colonel Joseph Peach*, *Lieutenant Colonel Pemble*, *Lieutenant Gavinett*, *Lieutenant Gurnet*, *Lieutenant George Brown*, *William Cook*, Adjutant of the Garrison of *New Fort William*, *Serjeant Pemm*, *Frederick Thomas Smith*, Fort Major at *New Fort William*, *Lieutenant John Brown*, Doctor *Ellis*, and several other Persons then resided in the *East-Indies*, without the Advantage of whose Testimony the Respondent could not make a full and proper Defence on the Trial of the said Action, and which Testimony he could not have but on a Commission for the Examination of his several Witnesses in the *East-Indies*, issuing out of and under the Authority of the said Court of Exchequer.

Prayer of the Bill.

Therefore the Respondent by his said Bill prayed, That one or more Commission or Commissions might issue out of and under the Seal and Authority of the said Court of Exchequer, for the Examination of the Respondent's Witnesses in the *East-Indies*, and that he might be at liberty to examine his Witnesses there, as he should be advised, under the Order and Authority of the said Court; and that in the mean Time the Appellant might be restrained, by the Order and Injunction of the said Court of Exchequer, from proceeding at Law against the Respondent in the said Action, until such Commission or Commissions should be executed and returned into the said Court.

24th June 1775.
Answer of Appellant.

The Appellant, on the 24th Day of June last, put in his Answer to the said Bill, and thereby stated, that he being an *Armenian*, and a Native of *Ispahan* in *Persia*, he for many Years, and till lately, lived or resided in *Hindostan*, particularly in the Province of *Owd* in *Hindostan*, within that Part of the Dominions of the *Nabob Sujab al Dowlab*, which was under the Jurisdiction of the *Rajah Bulwantsing*; and that during all, or the greatest Part of the Time of his residing there, he was concerned in Trade or Merchandize, in a very considerable and extensive Way, as well in his own Right as Agent for Merchants of other Nations, upon Commission and otherwise, whereby he acquired a comfortable Livelihood or Support; and that being so resident and trading in the said Province as aforesaid, a Party of armed Seapoys, or Black Soldiers, in the Service of the said *Rajah Bulwantsing*, on or about the 14th of March 1768, under the Command of an Officer of the said *Rajah*, did, in a violent and abrupt Manner, seize the Appellant, at *Barah*, in the said Province of *Owd*, and afterwards confined him in a Fort, and informed him that he was so seized by virtue of a *Perwannah*, or Order in Writing, which the said *Rajah* had issued in pursuance of an Order from the Respondent, then acting as President and Governor of *Calcutta* in *Bengal*, on Behalf of the United Company of Merchants of *England* trading to the *East-Indies*; and that the said Officer, at the Time he so seized the Appellant as aforesaid, shewed to the Appellant the said *Perwannah* or Order from the said *Rajah*, for seizing the Appellant, which, according to the best of his the Appellant's Remembrance and Belief, was to the Purport and Effect following; "It is the Order of the Governor of *Calcutta* to seize and imprison *Coffee Gregore*." And that after being kept a Prisoner for several Days, he was carried to *Chowmah*, where he received from the said *Rajah* and his Ministers Letters approving of his Conduct, and condoling with him upon his being imprisoned under the Orders of the Respondent; and from thence was conducted under a strong Guard of armed Soldiers to *Patna*, and delivered to *Shetabroy*, who was then the Collector of the Revenues on Behalf of the said Company at *Patna*, who ordered the Appellant to be confined under a Guard of Soldiers, who were entertained in the Service of the said Company, within the Territories assumed by them under the Name of *Dewanee Territories*, and under the Command of their Servants and Collectors, under the Names of *Rajahs*, *Nabobs*, *Fouzdars*, &c. and then particularly under the Management of the said *Shetabroy* and *Mahomed Rbeza Khawn*, who, as the Appellant believed, acted under the Orders of the Respondent; and that by virtue of the Orders of the Respondent, as the Appellant believed, he was conducted under Confinement to *Murshadabad*, where he was put under a Guard of the *English* Seapoys, and was there so kept and confined until on or about the 23d of May 1768, and was used with great Cruelty when so under Confinement; and after having travelled for the Space of 600 Miles, or thereabouts, was afterwards discharged without having been accused, or brought to any Trial or Examination with respect to any Crime or Misdemeanor whatsoever, and without having any Cause assigned to him for his being so seized and imprisoned as aforesaid, except that it was the Will and Pleasure of the Respondent, or to that or the like Effect; and that at the Time he was so seized as aforesaid, being engaged in beneficial Concerns in Trade, he was, by Means of his said Seizure and Imprisonment, stripped of the Advantage thereof, and also of the Whole or the greatest Part of his Property, which was very considerable, and was greatly harrassed both in Body and Mind, inasmuch that his Life was despaired of; and that he was so suddenly forced away from his said House or Habitation, without any

14th March 1768,
the Appellant seized
at *Barah*, in the Province of *Owd*.

any reasonable Opportunity of taking common Necessaries with him; and that in the Course of his said Confinement he was frequently used with great Ignominy and Severity by the Guards set over him; and that by Means of the Hardships he suffered in the Course of such Confinement, he became greatly afflicted with various Disorders; and that at the Time the Appellant was so seized as aforesaid, he was, as he believed, in perfect Harmony and Friendship with the said Rajah *Bulwantsing*; and that, according to the best of his Knowledge, Remembrance, and Belief, or from any thing he remembered to have heard, the said Rajah did not give any Orders or Directions whatsoever for seizing, imprisoning, or banishing the Appellant from his Territories, otherwise than as aforesaid, and which the Appellant believed the said Rajah was intimidated to do by or thro' the Means of the Respondent, and one *Richard Smith*, a Military Officer in the Service of the said Company, or one of them; the said Rajah being, as the Appellant believed, at the Time the Appellant was seized, under the immediate Influence and Direction of the said Company, or their Governor and Council at *Calcutta*, and the said Company being, as he believed, or having been, actually Masters of the said Rajah, and the Country and Territories over which he presided; and that at the Time he was so seized as aforesaid, he was possessed of, or interested, in his own Right, in various Effects in the several Provinces of *Patna*, *Ghazipore*, and elsewhere, in *Hindustan* aforesaid, consisting of Household Goods, Stock in Trade in various Articles, and Debts due to him, to a very large Amount in the whole; and that at the Time he was so seized as aforesaid, he was concerned or engaged in several beneficial Contracts then remaining to be performed, from which, in Case he had not been so seized, very considerable Profits would have arisen, as he believed, amounting, as he likewise believed, to several Thousand Pounds more; and that he was at the same Time likewise possessed of, or interested in, certain Perwannahs, Grants, or Licences, for Salt-Petre and Opium, and other Articles in Trade, in the Districts aforesaid, or some of them, and from which, as he believed, if he had not been so removed as aforesaid, he would have received considerable Advantages in a very short Space of Time, such Perwannahs, Grants, or Licences, being, as he believed, worth at that Time, to be sold, several Thousand Pounds more; and which, with all or most of the Matters aforesaid, and the Profits thereof, were, by reason of the Appellant's being suddenly seized and imprisoned, totally lost to him, together with many of his Papers, Books of Account, and Writings, he not having had any reasonable Time or Opportunity allowed him for preserving or taking care of his said Effects or Concerns; and as, after he had been so confined, and discharged from such Confinement, he was threatened, by an Edict published at *Calcutta*, as he believed, by or through the Means of the Respondent, and the said *Smith*, and others of the Council of the said Company at *Calcutta*, with Imprisonment, Corporal Punishment, or Confiscation of his Effects, in Case he, or any Person for him, should go into the Countries to take Care of his said Effects, the said Edict, as he believed, prohibiting or forbidding all *Armenians* from going to or residing in any of the Countries of the said Nabob *Sujah al Dowlah*, or the Rajah *Bulwantsing*, or sending any Person there, under such or the like Penalties as aforesaid, or to that or the like Effect: And that he was not only deprived of or prevented from receiving any Profits from his said Concerns in Trade as aforesaid, or any of them, but, by reason of his said Imprisonment, he necessarily sustained very considerable Charges and Expences, to the Amount of many Hundred Pounds, and was also exposed to other considerable Charges in coming to *England* for Redress in the Premises: And that he had, by his Seizure and Imprisonment, and from the Consequences thereof, actually sustained Losses and Damages, upon the whole, amounting, as he believed, to the Sum of 15,000 *l.* and upwards.

Action. The Appellant admitted, by his Answer, that he had caused an Action of Assault and Imprisonment to be commenced in his Majesty's Court of Common Pleas at *Westminster*, against the Respondent and the said *Smith*, and declared therein, and laid his Damages at 20,000 *l.* and that he had assigned the Causes aforesaid as the Ground and Foundation for and as the Cause of such Action.

that in and Nov. 1766, to 1768, he was Agent William Bolts. The Appellant also admitted, that in and before the Month of *November* 1766, and from that Time to *March* 1768, he was employed as Agent for the said *William Bolts*, by Commission, in extensive Dealings or Concerns in Trade within the Territories, Government and Jurisdiction of the said Rajah and Nabob respectively, and believed the said *William Bolts* was, before the said Month of *November* 1766, in the Service of the said Company; but had then, as he believed, quitted the same; but whether the said *William Bolts* had not, after he had so quitted such Service, any Right to carry on Trade within the Limits described by the Charter in the said Bill mentioned, either by himself or his Agents, the Appellant, by his said Answer, alledged he did not know, nor could set forth, nor could form any Belief concerning the same, save that whilst he was so concerned as Agent for the said *William Bolts* as aforesaid, he understood that the said *William Bolts* had a Right to Trade in the said Dominions of the Nabob *Sujah al Dowlah*, and the Rajah *Bulwantsing*, not having heard of any Complaint against him on that Account, and knowing that the said Rajah *Bulwantsing* in particular had granted his Perwannahs or Licences for that Purpose.

He said, that he did not know, nor could set forth, or form any Belief, whether any Gomastahs or Agents employed by any of the *English* in the said Country, was or were guilty of any great or other Oppression or Extortion under the Sanction of the *English* Name, or contrary to any Resolutions of the said President and Council of *Fort-William*, as aforesaid, and any Orders and Directions of the said Court of Directors, of the said Company, for the recalling of Gomastahs or Agents of the *English* from the Provinces, and withdrawing the Protection and Sanction of the *English* Name from them, in the said Bill mentioned, or otherwise; or that any such Gomastahs or Agents were or had been guilty of great, or any other Fraud or Oppression, in the Course of their Trade, and in Opposition to the lawful Authority of the said Nabob and Rajah, or either of them, and contrary to the Laws of their respective Dominions; or whether any such Resolutions, Orders, or Directions, as in the Bill mentioned, were made by the President and Council of *Fort-William*, and Court of Directors of the said Company respectively, or any of them, or any other Resolutions, or Orders, or Directions, of such or the like Date, Purport, or Effect respectively, or any of them.

The Appellant, by his said Answer, denied that he was seized, confined, imprisoned, or removed from Place to Place, according to the best of his Knowledge, Remembrance and Belief, or from any thing he remembered to have heard, save by or from the Bill, under or by virtue of any Warrant, Order, Authority or Directions of the said Nabob and Rajah, or either of them, or any other Country Power within the Jurisdiction of them, or either of them, for or on Account of any Breach of any Laws of the said Territory, or any of them, or any Disobedience to the lawful Authority of, and as an Offender against, them, or any or either of them, or as being in any wise obnoxious thereto, and to the Jurisdiction and Authority of the Government thereof, or was informed so at the Time; or that he was so seized or confined at the Desire, and upon the Complaint, and by and under the Order and Direction of the said Rajah and Nabob, or either of them, or any other Country Power within their or either of their Jurisdiction, for such or the like Reasons as in the Bill are mentioned, or otherwise than as aforesaid.

The Appellant, by his Answer, denied, that after he was seized and imprisoned, and during his said Confinement, he was treated with all possible Humility and Tendernefs in every or any Respects or Respect, but, on the contrary, that he was treated with great Cruelty; but whether by the Order of the Respondent or not, he did not know, nor could set forth, or form any Belief concerning the same: And he also denied, that before he was seized he had, according to the best of his Knowledge, Remembrance, and Belief, any Notice or Admonition thereof, save as therein mentioned, or that he was seized and imprisoned and removed by or through the Means of the Respondent, at the Desire, and on the Complaint, and by and under the Direction, Warrant, Order, or Authority of the said Rajah or Nabob, or either of them, or of any other Country Power, for the necessary Protection of the Trade, and good Order and Government of the *East-Indies*, and the said Territories of the said Rajah and Nabob, or either of them, or any other Country Power in the *East-Indies*, according to the best of his Knowledge, Remembrance, and Belief, but, on the contrary, that he was seized or arrested, imprisoned or confined, contrary to, or in Violation of the known Laws, Customs, or Usages, within the said Jurisdiction or Territories, as he believed.

that Re- called as Ser- East-India The Appellant, by his said Answer, admitted it to be true, that at the Time he was seized or arrested, the Respondent was, or acted as, a Servant of the said Company, and who, as the Appellant believed, were then in Amity with

with the said Nabob and Rajah, and other the Country Powers respectively in *Hindustan* aforesaid; but the Appellant denied that, according to the best of his Knowledge, Remembrance, and Belief, the Respondent did not act otherwise therein, or with Respect to the said Seizure and Imprisonment, and withdrawing any Sanction or Protection which the Appellant might have or claim, or pretend to, as Agent to the *English*, than as a Servant to the said Company; or that what the Respondent so did, as aforesaid, was done by him in Pursuance of any such Orders and Letters of the said Company, as in the Bill mentioned and set forth, and for the Support, Welfare, and Maintenance of the Company's Trade in *Bengal*, and as acting under the Authority of any such Charter and Acts of Parliament, as in the Bill mentioned, or any of them; or that the several Matters or Charges in the said Bill mentioned, or any of them, would appear, or could be proved, by the Testimony of several or any Persons then being in the *East-Indies*, and by several authentic or other Records, Documents, Orders, Letters, and Papers then in the *East-Indies*; or that, according to the best of his Knowledge and Belief, there were several or any material Papers or Documents relating to the several Matters in the Bill mentioned, or any of them, in the *East-Indies*, or several or any material Witnesses who could prove the Truth of all or most or any of the Matters and Facts stated and charged in the Bill to have passed in the *East-Indies*, or the Circumstances attending the Seizure and Imprisonment and Confinement; or that the Respondent could not, according to the Nature or Circumstances of his Case, make a full and complete Defence on the Trial of the said Action, without having the Benefit of any such Evidence and Testimony, in case he could have any such from the *East-Indies*.

The Appellant denied, that the Respondent, as the Appellant was advised, and verily believed, was or could be prevented from going to Trial in the said Action, having pleaded the general Issue therein, by not having the Testimony of the several Persons in the said Bill mentioned as his Witnesses, or any other Witnesses for proving the Truth of the several Matters and Facts in the said Bill in that Behalf mentioned, and for proving and authenticating the several Acts, Orders, and Resolutions therein mentioned to have been made and done; but, on the contrary, the Appellant insisted that the said Bill was vexatious, and calculated merely to delay the Trial of the said Action for a considerable Length of Time, and during which the Appellant might die; and that the Appellant was advised there was not any Thing in the said Bill alledged proper for constituting a Defence in the said Action; and as some of the Persons named as Witnesses in the said Bill had, as he believed, been long since dead, and as others of them, as he had been informed, and believed, had for some Time past been in *England*, or had left *India*.

The Appellant by his said Answer also said, that he knew nothing of the Acts of Parliament, Charter, Commission, General Letters, Orders, or Resolutions mentioned in the Bill, or whether such General Letters, Orders, Minutes of Resolutions, and Commission, were in the *East-Indies*, or what other Place, if any such existed; or whether the Respondent acted as President and Governor of the Presidency of *Bengal* and President of the Select Committee, from *January* 1767, till his Departure from the *East-Indies* to *England*, or for, from, or to, any or what other Space of Time, save that from what he had heard and seen in *India*, he believed that the Respondent was President and Governor of *Bengal* and its Dependencies on Behalf of the Company.

He said, That the Name of the Officer by whom he was seized and imprisoned at *Barah*, was *Bukhsing*, and that he was confined at *Deildarnagar*, as well as at *Barah*, *Patna*, and *Murshedabad*; and that the Name of one of the Persons who were concerned in confining the Appellant from *Barah* to *Patna*, was *Meer Abdullah*; and that the Name of one of the Persons who were concerned in confining the Appellant at *Patna*, was *Meer Cossim*, a *Jamadar*; and the Names of the Persons concerned in confining the Appellant at *Murshedabad*, were *Sookdeb Bowany Teichsing*, a *Jab*, *Subbarw Meer*, and *Budboo*; but who were the other Persons concerned in seizing, imprisoning, and confining the Appellant, at all or any of the Places aforesaid, or otherwise, the Appellant did not remember, nor could set forth, or form any Belief concerning the same, save as aforesaid.

The Appellant by his said Answer also said, that he had heard, and believed it to be true, that the said Rajah *Bukwantsing*, and *John Holme*, in the Bill named, were dead; and that *William Cook*, in the Bill named, was in *England*; and that the said Nabob *Sujab al Dowlab*, and Nabob *Mahomed Reza Khawn*, Sir *Robert Barker*, *Gabriel Harper*, and *Simeon Droze*, in the Bill named, were in the *East-Indies*; but where the rest of the Persons, in the Bill mentioned to be material Witnesses for the Respondent in the said Action, or any of them, were or was, or in particular whether they or any of them were then in the *East-Indies*, the Appellant did not know, nor could set forth or form any Belief concerning the same.

30th June 1773.
Injunction moved for.

On the 30th Day of *June* last, the Respondent moved the said Court of Exchequer for an Injunction to stay the Appellant's proceeding at Law, and that such Injunction might extend to stay Trial; and such Motion, after hearing Council on both Sides, was ordered to stand over to be moved again the first Day of the Sittings after last Trinity Term; and accordingly,

9th July 1773.
Injunction again moved for and granted.

On the 9th Day of *July* last the Respondent, by his Council, again moved the Court of Exchequer for an Injunction to stay the Appellant's Proceedings at Law, upon the Merits; when, upon hearing of Council on both Sides, and reading the Appellant's Answer, it was, upon due Consideration had by the Court, ordered, that an Injunction should forthwith issue, and an Injunction hath been issued pursuant to such Order.

Replication to Answer.

The Respondent being desirous to go to Commission in the said Cause as soon as possible, immediately replied to the Appellant's Answer; and on the same 9th Day of *July* 1773 moved for, and obtained, a Subpœna to rejoin.

13th July 1773.
Commission to examine Witnesses moved for on the Respondent's Affidavit.

On the 13th of the same *July* the Respondent moved for a Commission to examine Witnesses in the *East-Indies*, upon an Affidavit made by the Respondent, That his Bill of Complaint filed in the said Court of Exchequer was not filed with a frivolous or vexatious Intent, or merely to delay the Appellant's Trial at Law, or to put him to unnecessary Expence or Trouble, but for a Discovery of the several Matters charged in the said Bill, all or most of which were, as the Respondent believed, founded in Truth; and to obtain full Proof of the several Facts and Matters therein contained or alledged; and to authenticate the several public Acts, Orders, and Resolutions particularly mentioned in his said Bill, by an Examination of many of the Witnesses in his said Bill particularly named, and other Persons then resident in the *East-Indies*, as he believed, under one or more Commission or Commissions for that Purpose, to be issued out of, and to be returned into, the said Court of Exchequer; and that many material Facts and Circumstances relating to the supposed Seizure and Imprisonment of the Appellant, and the Cause and Manner thereof, and the Authority under which the same was done, and by whom, and also the Nature of the Confinement, and the Treatment of the Appellant; and likewise with Respect to his Property, and the Nature of his Loss or Damage sustained by such supposed Imprisonment, and which were necessary or proper for the Respondent's Defence on the Trial of the Action brought against him, were only in the Knowledge of Persons then resident in the *East-Indies*, as he believed, and who were present at, or privy to, the Transactions in the Respondent's Bill mentioned, and acquainted with the Circumstances attending the same, and particularly several of the Persons named in the said Bill, and whose Testimony he could not have the Benefit of without a Commission for that Purpose to the *East-Indies*: And that if such Commission was granted, he believed he should be able to have the Depositions taken of many of the Persons named in the said Bill, and particularly of the several Princes of the Country in Amity and Alliance with the said *East-India* Company, and in whose Territories several of the Facts and Circumstances happened or were done, and others their Ministers, Envoys, and Servants, respecting the Matters for which the Appellant had brought his Action against the Respondent: And that without the Examination of many of the Persons named in the Respondent's Bill, who were then in *India*, and some of whom were never likely to come to *England*, being Natives of that Country, and others of whom were likely to remain in *India* for a considerable Time, and other Persons in *India* not named in the Bill, who were well acquainted with the several Facts and Circumstances mentioned in the Respondent's Bill, he was advised, and believed he could not make a full and proper Defence on the Trial of the said Action.

Commissions ordered.

Upon such Application the said Court of Exchequer ordered, that the Respondent should be at Liberty to sue out one or more Commissions for the Examination of Witnesses to be executed in the *East-Indies*, and that the Appellant

Appellant should exchange and strike Commissioners Names with the Respondent's Clerk in Court, in a Month; and that each Side should be at Liberty to name Eight Commissioners, whereof Four were to be struck out by the opposite side; and that the said Commissions should be returnable without Delay; and in Case the Appellant should join in the said Commission or Commissions, he was to be at Liberty to take out a Duplicate or Duplicates thereof, and to execute the same, in case the Respondent should not proceed to execute his Commission or Commissions within two Months after the Arrival thereof in the *East-Indies*; but in case the Appellant should make Default in exchanging and striking Commissioners Names with the Respondent's Clerk in Court, within the Time aforesaid, then the Respondent was to be at Liberty to sue out such Commission or Commissions directed to his own Commissioners only; and that a Clause should be inserted in such Commission or Commissions, for the Commissioners to be empowered to swear an Interpreter, well and faithfully to interpret the Oath and Interrogatories to be exhibited to such of the Witnesses who should be examined on the said Commission or Commissions as should not understand the *English* Language, and also to interpret their Depositions to the said Interrogatories if it should be necessary; and that the Word (Corporal) and the Words (upon the Holy Gospels of God) should be left out of such Commissions; and that instead of those latter Words, the Words, in the most solemn Manner used in that Country, should be inserted; and that the said Commissioners should certify to the said Court of Exchequer, in the Return of the said Commission or Commissions, in what Manner the Oath had been administered to each and every of the Witnesses, who should have been examined under and by virtue of the said Commission or Commissions, and of what Religion each and every of the said Witnesses respectively was or were.

Commissioners nam-
and Commissions
to the East-Ind-

In Pursuance of such last Order, the Respondent named his Commissioners, and the Appellant also named his Commissioners; and the Appellant having joined in the Commission, Commissioners names were struck, and a Commission sealed; and such Commission was made out on the Part of the Respondent, and a Duplicate thereof was also made out on the Part of the Appellant; and the Respondent's Commission was sent to the *East-Indies* in the Ship *Asha*, and a Duplicate thereof was also sent by the Respondent in the Ship *Bute*, in the Month of December last.

Notwithstanding which, and in order to prevent the Respondent from reaping any Benefit from the Examination of his Witnesses in the *East-Indies*, the Appellant has thought fit at Length to appeal to your Lordships, and prayed a Reversal of the said Order of the 9th day of July 1773, by which the Court granted an Injunction; but the Respondent humbly hopes the same shall be affirmed, (among other Reasons to be offered at your Lordships Bar) for the following

R E A S O N S :

- I. It is not consistent with the Rules of Justice and Equity that any Person should be forced on to a Trial at Law without having the Benefit of every material Evidence in his Favour; and as there is no Method at Law to procure the Testimony of Persons who reside in Foreign Countries, it has long been the constant and frequent Practice of Courts of Equity, to grant Commissions for the Examination of such Witnesses, in order that their Depositions may be had and used as Evidence upon the Trial at Law; and to grant an Injunction to stay the Proceeding to Trial in the mean Time, as without this latter Relief, the former would be of no Use.
- II. As such Depositions cannot be used at Law, if taken before the Cause in Equity is at Issue, it is often necessary to apply for the Injunction upon the filing the Bill, before the Time for answering is out, or even before the Defendant has appeared, which is granted upon an Affidavit of the Plaintiff in Equity, that he has material Witnesses abroad; or upon the coming in of the Defendant's Answer, before Issue is joined, as otherwise the Cause might be tried at Law before the Court of Equity could give the Relief prayed by the Bill, which Relief is a Commission for the Examination of Witnesses in Foreign Parts.
- III. When such Injunction is applied for after the coming in of the Defendant's Answer, it is granted or refused upon the general Nature of the Case, and the Probability that the Defendant has material Witnesses resident abroad appearing from the whole of the Answer; and it is not necessary that there should be a full and precise Admission that the Plaintiff in Equity has material Evidence for his Defence abroad; for then no such Injunction could ever Issue, such an Admission amounting to a Confession that he (the Defendant in Equity) has no good Cause of Action at Law: but, upon applying for the Commission, it is necessary for the Plaintiff to make an Affidavit that he has material Witnesses abroad.
- IV. A Relief somewhat similar is given at Law by putting off the Trial on Account of the Absence of a material Witness, who is gone into Foreign Parts for a short Time only, and expected soon to return; but that Relief does not, nor can, in its Nature, extend to the Case of Witnesses who are resident in Foreign Countries.
- V. In this Case, it is confessed by the Answer, that the Cause of Action wholly arose in the *East-Indies*; that it is not grounded on a meer personal Assault by the Respondent on the Appellant, but is at most only a constructive Assault and Imprisonment, which, as to the Fact itself, and the Matter of the general Issue, depends upon a Variety of Circumstances; and as to the Amount of the Damages, which the Defendant estimates at a very large and enormous Sum, they may be greatly lessened by the Grounds, Motives, and apparent Necessity for the Exercise of the Authority, even if it should finally appear not to have been strictly legal; the Want of Malice or Ill-will in the Actor; the Manner of Behaviour, the Nature of the Treatment, and the Situation and actual Losses of the Party supposed to be assaulted and imprisoned; all or most of which Circumstances cannot but be known to many Persons now in the *East-Indies*, some of whom are named in the Bill, and admitted to be abroad, and from their Situation and Offices must be supposed to be conversant with and conversant of those Circumstances, and which the Defendant has not ventured to offer any Reason for believing they are not; and he has not sworn that in fact they were not privy to the Transaction.
- VI. As a Commission has actually issued, and been sent to the *East-Indies*, the reversing the Order appealed from would render such Commission, and all that has been done subsequent to the Order, nugatory and useless, as the Cause may be tried before such Commission is returned, if the Injunction is dissolved; although the Appellant has not thought fit to appeal from the Order directing the Commission to issue, but only from the Order for an Injunction, which, though prior in point of Time to the Order for a Commission, yet is in reality consequent upon, and necessarily follows the Respondent's Right to have such a Commission, which Right has been established by the Court of Exchequer, by making the Order for a Commission, which remains unappealed from.

Johannes Padre Rafael, - - - - -

Appellant.

Harry Verelst, Esq; - - - - -

Respondent.

Action in the Com-
mon-Pleas.—Dama-
ges 20,000*l*.
Bill filed by the Re-
spondent.

Answer of the Ap-
pellant Rafael.

Proceedings in the
Exchequer the same
as in the Suit against
the Appellant Coja-
maul.

Additional Reason.

THIS Appellant, *Johannes Padre Rafael*, brought a like Action as the Appellant *Gregore Cojamaul*, and like-
wise laid his Damages at 20,000*l*.

The Bill exhibited against him, states the same Acts of Parliament, Letters Patent, General Letters, and Orders
of the Court of Directors of the *East-India Company*, and Resolutions of the President and Council at *Fort-William*,
and contains the like Charges as the Bill filed against *Cojamaul*.

This Appellant put in the like Answer, and almost in the same Words, with the like Admissions and Denials
of the Facts charged by the Bill, as the other Appellant *Cojamaul*, except as to the Place, Time, and Manner of
his Imprisonment; as to which, the Appellant *Rafael* stated, that he was resident in the Province of *Owd*, in
Hindostan, within the Dominions of the Nabob *Soujah al Dowlah*, and that he was seized and imprisoned at *Fysabad*,
in the said Province of *Owd*, on or about the 27th of April 1768, by a Party of armed Seapoys, or Black Soldiers,
in the Service of the *East-India Company*, stationed at the Court of the said Nabob, under the Command of *Gabriel*
Harper, a Captain in the Service of the said Company, and carried by Force to the said *Gabriel Harper*, who in-
formed him that he had received Letters or Orders from the Respondent, then being or acting as the Company's
President at *Calcutta*, and Commander in Chief of the Forces dependent on that Presidency, to seize and send this
Appellant a Prisoner to *Calcutta*; and stated his having been carried from Place to Place, till he arrived at *Mur-*
shedabad, and the Treatment of him when under Confinement, in the same Manner as the other Appellant *Cojamaul*
did by his Answer.

The Proceedings in the Court of Exchequer, with respect to the Appellant *Johannes Padre Rafael*, are the
same as those with respect to the other Appellant; and the Order for an Injunction made in the Suit instituted
against this Appellant, is exactly the same, and was made on the same Grounds as that made in the Suit against
the other Appellant; and therefore the Respondent hopes such Order will be also affirmed by your Lordships, for
the same Reasons as are offered in Support of the Order made in the other Cause, with this additional One:

That Captain *Harper* appears, upon the Face of the Appellant's Answer, to be a Person, who can very materially
depose with respect to the Matter in Issue; and he is admitted by the Answer to be in the *East-Indies*.

J. SKYNNER.
JOHN HETT.

Die Martis 21. Junij 1774.

*Order'd and Adjdg'd That the Orders Complain'd of in these two Appea-
ls be Revers'd.*

House of Lords.

Gregore Cojamaul, - Appellant.

Harry Verelst, Esq; - Respondent.

AND

Johannes Padre Rafael, - Appellant.

The same Respondent.

The Respondent's CASE.

To be Heard at the Bar of the House of Lords;
on Thursday the 5th Day of May, 1774.



Jan. 31.